

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE  
Southern Division

In re

BILLY WALKER SMITH, and  
ELVIRA TERESA SMITH

Bankruptcy Case  
No. 92-14324

**MEMORANDUM**

Appearances: Mark T. Young, Mark T. Young & Associates,  
Chattanooga, Tennessee, Attorney for Debtors

Kent Anderson, Assistant United States Attorney,  
Chattanooga, Tennessee; Stephen P. Kranz, United  
States Department of Justice, Washington, D.C. (on  
the brief); Attorney for the Internal Revenue  
Service

R. Thomas Stinnett, United States Bankruptcy Judge

In this Chapter 13 case, the debtors have objected to claim 17 and the amendment (claim 17a) filed by the Internal Revenue Service ("IRS") on the basis that the original claim was filed after the last day for filing proofs of claims. The objection is sustained, and the IRS claim is disallowed for the reasons hereinafter stated.

The rules of bankruptcy procedure establish deadlines for filing a proof of claim in a chapter 13 case. FED. R. BANKR. P. 3002(c), 3004 & 3005. The law requires notice to creditors of the bankruptcy case and of the last day to file a proof of claim. 11 U.S.C. § 342; FED. R. BANKR. P. 2002(f)(3). Lack of notice is a ground for treating a late-filed claim as timely filed under principles of due process. *United States v. Cardinal Mine Supply, Inc.*, 916 F.2d 1087, 20 Bankr.Ct.Dec. 1864, 23 Collier Bankr.Cas.2d 26 (6th Cir. 1990); *IRS v. Century Boat Co. (In re Century Boat Co.)*, 986 F.2d 154, 23 Bankr.Ct.Dec. 1700 (6th Cir. 1993); *In re Cole*, 146 B.R. 837 (D. Colo. 1992); *In re Anderson*, 159 B.R. 830, 29 Collier Bankr.Cas.2d 1462 (Bankr. N.D. Ill. 1993). The IRS admits receiving notice of this case in October 1992, including notice that the last day to file claims was February 2, 1993. At the hearing, the IRS presented no proof of lack of due process. The IRS did not file the original proof of claim until February 1994.

In a chapter 11 case the court may allow a late-filed claim if the late filing resulted from the creditor's excusable neglect, but that rule does not apply in chapter 13 cases. FED. R. BANKR. P. 9006(b)(1) & (b)(3); *Pioneer Investment Services Co. v.*

*Brunswick Associates Ltd. Partnership*, 113 S.Ct. 1489, note 4 at 1495, 123 L.Ed.2d 74 (1993).

The IRS argues that late filing simply is not a ground for disallowing the claim. For this proposition, the IRS relies on *In re Hausladen*, 146 B.R. 557, 27 Collier Bankr.Cas.2d 1321 (Bankr. D. Minn. 1992) and its progeny.

The court is of the opinion that *Hausladen* was wrongly decided. Instead, the court would follow the analysis expressed by Judge Clark in *In re Friesenhahn*, 169 B.R. 615 (Bankr. W.D. Tex. 1994). Furthermore, the court would observe that the Bankruptcy Reform Act of 1994 expressly overruled the *Hausladen* line of cases by adding late filing as a ground for disallowing a claim under 11 U.S.C. § 502(b). Bankruptcy Reform Act of 1994, Pub. Law No. 103-394, § 213(a), 108 Stat. 4106 (1994). Even though the amendment does not apply to this case, Bankruptcy Reform Act of 1994, Pub. Law No. 103-394, § 702, 108 Stat. 4106 (1994), it is relevant as an indication of what Congress intended the law to be before the amendment. "[W]hile the views of subsequent Congresses cannot override the unmistakable intent of the enacting one, . . . such views are entitled to significant weight . . . and particularly so when the precise intent of the enacting Congress is obscure." *Seatrain Shipbuilding Corp. v. Shell Oil Co.*, 444 U.S. 572, 100 S.Ct. 800, 814, 63 L.Ed.2d 36 (1980).

The court will enter an order disallowing the claim. This memorandum is the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052.

At Chattanooga, Tennessee.

BY THE COURT

---

R. Thomas Stinnett  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE  
Southern Division

In re

BILLY WALKER SMITH, and  
ELVIRA TERESA SMITH

Bankruptcy Case  
No. 92-14324

Debtors

ORDER

For the reasons stated in a Memorandum Opinion filed  
contemporaneously herewith,

It is ORDERED that claim 17 as amended by claim #17a  
filed by the Internal Revenue Service is disallowed.

ENTER:

BY THE COURT

---

R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE

[entered January 13, 1995]